

REMARKS

The present application was filed on September 23, 2003, with an effective filing date of December 20, 2002. Claims 1-22 remain pending, including independent claims 1, 21 and 22.

Claims 1-22 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2004/0068649 (hereinafter "Haller").

The Haller reference relied upon in the present rejection claims priority to a provisional application filed on August 30, 2002. In the previous response filed April 28, 2008, Applicants submitted a declaration of prior invention in accordance with 37 C.F.R. §1.131, which evidenced the conception and actual reduction to practice of the claimed invention at least as early as April 19, 2002, and hence prior to the claimed priority of the Haller reference.

Applicants believe that the claims of the Haller reference and the claims of the present application are neither directed to the same invention nor are obvious variants of one another. Accordingly, Applicants respectfully submit that the aforementioned declaration is effective to overcome the present §102(e) rejection over Haller, in accordance with MPEP §§706.02(b) and 715.

It should be further noted that the Examiner has failed to indicate the portion(s) of Haller relied upon in formulating the rejection of any of claims 1-22. Accordingly, Applicants respectfully contend that the present Office Action is facially defective under 37 C.F.R. §1.104(c)(2) ("In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable.")

On pages 2 and 3 of the present Office Action, the Examiner has presented arguments directed to U.S. Patent Publication No. 2003/0065749 (hereinafter "Gailey"), over which the claims of the present application were rejected in the previous Office Action dated December 26, 2007. It appears that the Examiner has issued a new rejection over Haller rather than maintaining the prior rejection over Gailey. See MPEP §706.02(j) ("Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively included in the statement of the rejection.") (citing *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n.3 (CCPA 1970)). Accordingly, the arguments regarding Gailey are inapposite to the present rejection over Haller.

Furthermore, Applicants continue to assert that U.S. Provisional Application Serial No. 60/326,826, from which Gailey claims priority, fails to support the subject matter relied upon in formulating the prior rejection in the manner required by 35 U.S.C. §112, first paragraph.


For example, even one were to accept the Examiner's contention, found in the last paragraph of page 2 of the present Office Action, that "push content is clearly addressed in the provisional application under the push service from the server to the mobile in wireless network," such disclosure would still fail to reach the limitation of claim 1 directed to generating push content in a server responsive to information received in the server from an enterprise application.

Likewise, in arguing that Gailey discloses the limitation of claim 1 directed to receiving in the server from the mobile client device, responsive to the push content, a request for additional information identifiable at least in part by the push content, the Examiner relies on paragraphs [0039]-[0042] of Gailey. The subject matter disclosed in these paragraphs does not appear to be present in the provisional application to which Gailey claims priority, and the Examiner has presented no argument to the contrary.

In view of the above, Applicants respectfully submit that Gailey is not entitled to a §102(e) critical reference date earlier than its filing date of October 3, 2002. Accordingly, Applicants respectfully submit that Gailey has been removed from consideration by the previously-filed declaration which, as noted above, evidenced the conception and actual reduction to practice of the claimed invention at least as early as April 19, 2002.

In view of the above, Applicants believe that claims 1-22 are in condition for allowance, and respectfully request withdrawal of the present §102(e) rejection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph B. Ryan", followed by a horizontal line.

Date: August 12, 2008

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